

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT
OF ALABAMA SOUTHERN DIVISION**

WALTER WREN WYATT, III

Plaintiff,

vs.

**MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,
R. JAMES NICHOLSON in his capacity
as SECRETARY OF VETERANS AFFAIRS;
et al.,**

Defendants.

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CIVIL NO. 1:07-CV-326-MHT-CSC

**DEFENDANT MELLOR REPLY TO
APPLICATION FOR DEFAULT JUDGMENT**

____COME NOW Joshua Mellor and Natalie Mellor, Defendants, by and through their attorney of record, and show unto the Court as follows:

1. Plaintiff filed an application for Entry of Default (Document 20) on May 25, 2007 as to the Defendants Mellor.
2. Contrary to the assertion by the Plaintiff, Defendants Mellor have "plead, answered or otherwise defended as to the Plaintiff's Complaint" for that on March 23, 2007, while the case was still pending in the Circuit Court of Coffee County, Alabama, Enterprise Division, the Defendants, by and through their attorney, filed a Motion to Dismiss or Summary Judgment (copy of which is attached). This pleading was served on Plaintiff's prior counsel, Hon. Brad Stinson. This pleading presumably is part of the attachments to Document 1 removed from the Circuit Court of Coffee County, Alabama to this Honorable Court.
3. The counsel for the Defendants Mellor has been actively involved in the litigation, has conferred with attorneys for all parties, including the attorney for the Plaintiff, in regards to the Planning Meeting pursuant to Rule 26(f) and is shown as the counsel of record in the Docket Report of this Court.
4. Counsel for the Plaintiff has apparently overlooked the previous filing by Defendants Mellor.

WHEREFORE, the Application for Entry of Default and Default Judgment is due to be denied.

/s/ Richard W. Whittaker

Richard W. Whittaker (WHI031)
Richard W. Whittaker, LLC
Attorney for Defendant Mellor
P.O. Box 311166
Enterprise, AL 36331-1166
Telephone: (334) 393-5146
Facsimile: (334) 393-5247

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2007 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

1. John L. McClung at johnlmc@graceba.net;
2. James Asberry Byram, Jr. at jbyram@balch.com;
3. Louis Michael Calligas at lcalligas@balch.com; and
4. R. Randolph Neeley at Rand.Neeley@usdoj.gov.

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

Respectfully submitted,

/s/ Richard W. Whittaker
Richard W. Whittaker WHI031
Richard W. Whittaker, LLC
Attorney for Defendant Mellor
Post Office Box 311166
Enterprise, Alabama 36331-1166
Phone: (334) 393-5146
Fax: (334) 393-5247
RichardWhittaker@centurytel.net
Bar #: ASB-0401-E55R

IN THE CIRCUIT COURT FOR COFFEE COUNTY, ALABAMA
ENTERPRISE DIVISION



Walter Wren Wyatt, III

v.

Case No. CV-2006-275

Mortgage Electronic
Registration Systems, Inc,
R. James Nicholson in his
capacity as Secretary of
Veterans Affairs, Joshua
Mellor, Natalie Mellor et al

MOTION TO DISMISS OR SUMMARY JUDGMENT

Come now Joshua Mellor and Natalie Mellor, by and through their attorney, and show unto the Court as follows:

Plaintiff, Walter Wren Wyatt, III executed a mortgage on February 14, 2001 to Defendant Mortgage Electronics Registration Systems, Inc (MERS) referred to in Plaintiff's Complaint which is adopted by reference;

The Real Estate is commonly known as 109 Pratt Drive, Enterprise, Coffee County, Alabama;

The real estate owned by Plaintiff at 109 Pratt Drive was rented or leased by Plaintiff to Tenant, Deena L. Baugh, who was in possession of the said house at the time of, and on the date of foreclosure.

Foreclosure of the mortgage was held on April 6, 2006. Copies of the foreclosure (attached) are recorded in the Office of the Judge of Probate for Coffee County, Alabama and will be produced in support of this motion at the hearing on this motion.

Immediately following foreclosure, the Owner and Tenant was given notice in writing to deliver possession of the premises within ten (10) days. Attached as an exhibit is a copy of the written notice dated April 10, 2006 required by 6-5-251 Code of Alabama given to Plaintiff and Tenant. (This letter will be proven by Affidavit to be filed and/or presented at th hearing set on this motion).

The Plaintiff Owner could not be located other than the address of the premises and could not be otherwise found.

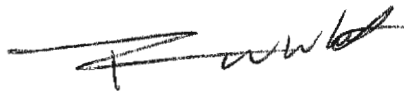
6-5-251 Code of Alabama provides that possession of the land must be delivered to the purchaser(at foreclosure) by the owner or tenant. This code section further provides that "...notice to the tenant is sufficient and he must deliver possession within 10 days".

The Plaintiff and the tenant failed to deliver possession within the ten (10) days (Proof will be submitted at the hearing set on this motion) and pursuant to code section 6-5-251:

Failure of the debtor or mortgagor (Plaintiff herein) or anyone holding possession under him or her (tenant herein) to comply with the provisions of this section forfeits the right of redemption of the debtor or one holding possession under the debtor

Wherefor, as a matter of law Plaintiff has no redemptive rights and the Complaint against these Defendants should be dismissed with prejudice.

Respectfully Submitted,



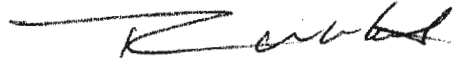
Richard W. Whittaker
Attorney for Defendants
Joshua and Natalie Mellor
P. O. Box 311166
Enterprise, AL 36331
(334) 393-5146

Defendants will support this motion with proof and testimony at the hearing scheduled therefor.

Certificate of Service

I have this date delivered to Brad Stinson, Attorney for the Plaintiff a copy of the above pleading by putting a copy in this box at the Circuit Courthouse in Enterprise, Coffee County, Alabama pursuant to usual practice in this Circuit.

This 23 day of March, 2007


Richard W. Whittaker, Esq